HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 1334 of 2007

DATED: 25-01-2007

Between:

K.Venkata Krishna Reddy

…Petitioner

and

The State of Andhra Pradesh, rep. by its
Secretary, Civil Supplies Department,
Hyderabad and others

…Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 1334 of 2007

ORAL ORDER:

The petitioner's father was authorized as a Fair Price Shop dealer in respect of Shop No. 1, Ramanapalli Village, Chennur Mandal, Kadapa District during 1980. He continued so till his death on 10-1-2007. On the demise of his father, the petitioner submitted a representation dated 12-1-2007 to the 3rd respondent intimating as to the death of his father and requested to forward the proposal to the 2nd respondent for transfer of the authorization in his favour. The 3rd respondent is stated to have considered his representation in the light of a Circular dated 29-6-2005 issued by the Commissioner of Civil Supplies and recommended the petitioner's case to the 2nd respondent for transfer of authorization in favour of the petitioner. The 2nd respondent however directed the 3rd respondent to make in-charge arrangements for running the fair price shop in question through one Penaguluru Narasimhulu, a Fair Price Shop dealer, Shop No. III, Ramanapalli Village, Chennur Mandal, Kadapa District.

The petitioner claims that as per the Circular of the Commissioner of Civil Supplies, dated 29-6-2005 and the extant practice, he is entitled for grant of authorisation as the legal heir of the earlier authorisee who died on 10-1-2007. As the respondents have not transferred the authorization in his favour nor have granted him authorization to run the Fair Price Shop in question, on the demise of his father; in transgression of the Circular dated 29-6-2005; and are

further proposing to make an in-charge arrangement in favour of another, the petitioner is before this Court, in substance seeking a direction to the respondents to appoint him as a Fair Price Shop dealer in respect of Shop No.1, Ramanapalli Village.

By the Circular dated 29-6-2005 (relied upon by the petitioner) the Commissioner of Civil Supplies addressed all the Collectors of Civil Supplies and the Chief Rationing Officer, Hyderabad to examine the feasibility by amending the earlier set of guidelines issued in G.O.Ms.No.53, dated 6-10-2003. The guidelines for identifying the issuance of authorization as Fair Price Shop dealers was issued on 6-10-2003. It would appear from the Circular of the Commissioner of Civil Supplies dated 29-6-2005 that the Chairman of the Fair Price Shop Dealers' Welfare Federation of Andhra Pradesh had requested to transfer the authorizations in the event of death of an authorized dealer, to their legal heirs. The Circular states that the request of the Federation was examined "and keeping in view the practicality and the circumstances explained", the request of the Federation deserves amendment to the guidelines issued in G.O.Ms.No.53. The Circular mooted certain conditionalities to be prescribed for transferring the authorization. The conditionalities suggested are under:

"1. Legal heir means wife, unemployed son and unmarried daughter.

2. Any of the member shall not be an earning member.

3. Authorisation shall be transferred if the legal heir is, otherwise, qualified as per guidelines.

4. If unmarried daughter is appointed as F.P. Shop dealer, her authorization ceases immediately after her marriage.

5. The family of the deceased dealer shall not be benefited under any Government Scheme.

6. Past performance of the deceased dealer such as

a) Lifting of essential commodities.
b) Maintenance of the records/shop timings.
c) Distribution of commodities without chagrin of the card holders.
d) Relationship with card holders etc.

7. Financial status to lift the stocks.

8. Antecedents."

The learned counsel for the petitioner would also place reliance upon a Judgment in W.P.No.19632 of 2006, dated 4-1-2007. In this writ petition, the relevant facts were that the son of a Fair Price Shop dealer who had died, was initially entrusted with the distribution of essential commodities. Thereafter, in-charge arrangements were made in favour of some other dealer. Eventually, a notification dated 5-9-2006 was issued inviting applications to fill up the vacancy. This was assailed by the petitioner claiming entitlement to transfer of authorization in his favour and relying on the Circular of the Commissioner of Civil Supplies dated 29-6-2005. Following an earlier Judgment in W.P.No.27067 of 2005 dated 27-9-2006 (wherein a direction was issued to consider the case of the petitioner as per Circular dated 29-6-2005), the learned Single Judge in W.P.No.19632 of 2006 directed the respondents to consider the case of the petitioner as per the Circular dated 29-6-2005 within the stipulated time frame.

At the admission hearing, the learned Government Pleader for Civil Supplies has placed before this Court a communication dated 23-12-2006 addressed by the Commissioner of Civil Supplies to the learned Government Pleader which is to the effect that as per the relevant Control order i.e., APS PDS (Control) Order, 2001 read with G.O.Ms.No. 53, dated 6-10-2003, the authorization is not transferable and the legal heirs of the deceased Fair Price Shop dealer have no right to claim for transfer of authorization. The Commissioner of Civil Supplies also states in the letter that this Court had observed in several writ petitions that Fair Price Shop dealership is not hereditary and the legal heirs have no right to claim for issue of authorization on their name. The Circular proceeds to state that after receipt of the response from the Chief Rationing Officer, Hyderabad and the Collectors, Civil Supplies to the earlier Circular dated 29-6-2005 and 18-10-2005 of the Commissioner of Civil Supplies a decision would be

taken. But as on date, there was no provision for transfer of authorization in the name of the legal heirs.

Article 14 of the Constitution injuncts the State not to deny to any person equality before the law or the equal protection of the laws within the territory of India. Neither the Essential Commodities Act, 1955 nor the APS PDS (Control) Order, 2001 nor even G.O.Ms.No.53 dated 6-10-2003 create or specify the grant of authorization (to run a Fair Price Shop) to be a heritable right. Creation of heritable right for entitlement to a public asset, restricting the grant of authorization to the legal heirs of the earlier authorisee would be a negation of the equality under the Constitution. In fact, Article 16 of the Constitution creates a constitutional right in respect of public employment and it clearly prohibits descent as the criterion for public employment. In any event, the Circular of the Commissioner of Civil Supplies dated 29-6-2005 does not mandate or direct transfer of authorisation in favour of the legal heirs of a deceased authorisee nor entitles a legal heir to claim as of right grant of authorization on the mere fact that a parent or other relation was the earlier authorisee, for however long a period. Authorisation of a Fair Price Shop is a public asset. All citizens who are qualified as per rational norms for grant of authorization are entitled to seek authorization. To restrict grant of authorization to the legal heirs of a deceased authorisee would negate and subvert the claims of citizens in general and would thereby transgress the constitutional mandate to equality.

On the aforesaid analysis, this Court discerns no justification to direct the respondents to either transfer the authroisation in favour of the petitioner or to consider the petitioner, preferentially for grant of authorization on the ground that his father was the earlier authorisee of Fair Price Shop No.1, Ramanapalli Village, Chennur Mandal, Kadapa District. Either for a temporary arrangement or on notification for regular grant of authorization, the petitioner if eligible to be considered and if qualified as any other person is at liberty to apply. The specific

relief sought in the writ petition however does not merit acceptance.

The writ petition is accordingly dismissed. No order as to costs.

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GODA RAGHURAM, J

25-01-2007
GRR